

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

v.

Cause No. 2003-0071-CR

CURTIS GIOVANNI FLOWERS

MOTION TO SET A BAIL HEARING

The Defendant, Curtis Flowers, hereby moves to set a bail hearing by the end of the second week of December, which is December 13, 2019. The bail motion was filed on September 19, 2019.¹ As explained in that motion, this is an unusual case in which there are strong arguments for bail based upon, among other things, Mr. Flowers' exceptional prison record of good behavior, the absence of any criminal record beyond the pending charge against him, and the evidence of innocence that has been bolstered by information that has surfaced since the last trial.

On October 2, 2019, this Court ordered the State to respond to the bail motion within 30 days. On October 18, 2019, at an informal status conference, the State requested an extension of time. As later memorialized in the Court's October 31, 2019 order, the Defense objected to the extension with respect to the bail motion. However, the Court granted the extension, stating that the deadline would be reset in the near future. At that status conference, defense counsel requested a bail hearing in November. That possibility was discussed, as was the possibility of a bail hearing in December. The Court stated that it had some open dates in December at which a bail hearing could be held.

¹ A superseding bail motion was filed on October 9, 2019. It added some exhibits and substituted some paper exhibits for online citations that were in the original bail motion, but made no substantive changes to the content of the motion.

It is now near the end of November. The Defendant has a right to the setting of bail under the circumstances of this case and a hearing should be set by the end of the second week of December, which falls on December 13, 2019. Both the District Attorney's Office and the Attorney General's Office were provided with copies of the Defendant's bail motion and the superseding bail motion soon after they were filed. Whoever represents the State at this hearing has had sufficient time to prepare for it, and also will be able to prepare any written response that the Court orders prior to the hearing.

Mississippi law requires a prompt determination of bail. Rule 8.5(a) of the Mississippi Rules of Criminal Procedure requires that "[w]hen a defendant is brought before a court for initial appearance, a determination of the conditions of release shall be made." Rule 15.1(a)-(b) requires that a defendant be arraigned within 30 days of being served with the indictment, at which time the court is required to "review the bond previously set, if appropriate." Of course, this case is now on remand after a reversal on appeal, but the remand puts the case in the same pretrial posture that existed in the beginning. There is no new indictment, but bail must be addressed anew, particularly given that the Defense has presented new information and new arguments that call for the setting of bail in this unusual situation. Thus, the promptness required by the rules is applicable here. Given that the mandate was issued on September 19, and the bail motion was filed the same day, the bail hearing should be held by December 13.

In *Jauch v. Choctaw County*, 874 F.3d 425 (5th Cir. 2017), the United States Court of Appeals for the Fifth Circuit --- ruling in a case where the Sheriff of Choctaw County failed for 96 days to bring an arrestee before a judge for a bail determination --- held that an extensive delay in the determination of bail was a violation of the procedural due process guaranteed by the Fourteenth Amendment to the United States Constitution:

Jessica Jauch was indicted by a grand jury, arrested, and put in jail --- where she waited for 96 days to be brought before a judge and *was effectively denied bail*. The district court found this constitutionally permissible. It is not. A pre-trial detainee denied access to the judicial system for a prolonged period has been denied basic procedural due process, and we therefore reverse the district court's judgment.

Id. at 427 (emphasis added). Any further delay in hearing and resolving the bail motion in this case would also “effectively den[y] bail” and would likewise violate the federal due process clause of the Fourteenth Amendment as well as the due process clause contained in Article 3, Section 14 of the Mississippi Constitution.

As just indicated, the nature of bail is such that a delay is tantamount to a denial. If a citizen has a statutory and constitutional right to bail under the circumstances of the case, as here, any delay prevents that person from exercising his right to be released on bail during the period of the delay. Thus, the right to a prompt hearing is encompassed in the right to bail contained in Miss. Code 99-5-35 and Article 3, Section 29 of the Mississippi Constitution, both of which require the granting of bail in this case (as explained more fully in the bail motion).

Accordingly, the Defendant respectfully requests that a bail hearing be set for not later than December 13, 2019.

Respectfully Submitted,



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Counsel for the Defendant

November 26, 2019

CERTIFICATE OF SERVICE

The undersigned attorney for Curtis Giovanni Flowers hereby certifies that he has caused to be served by electronic mail, pursuant to agreement of counsel, a true and correct copy of this document to:

Doug Evans
District Attorney
234 First Street
P.O. Box 1262
Grenada, MS 38902
E-mail: Evansda5@gmail.com

On the 26th day of November, 2019.

A handwritten signature in black ink, appearing to read 'RBM', written over a horizontal line.

Robert B. McDuff
Counsel for the Defendant